

the disease stated in the medical evidence. She says she was induced to cohabit with the defendant in ignorance of this fact, and would not have done so or forgiven him had she known thereof. She cannot, therefore, be taken to have condoned the adultery committed by the defendant, and I shall grant a decree of divorce as prayed.

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[Plaintiff's Attorneys: Messrs. BECKER & GLUCKMANN.]

[Reported by G. WILLE, Esq., Advocate.]

MASON, J.  
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1911.

WHITELOCK vs. ROLFES, NEBEL & Co.

*Partnership.—Dissolution.—Admission of new Partner.  
—Liability of new Firm for acts of old Firm.—  
Action against new Firm.—Pleadings.*

*Plaintiff sued defendants, a partnership registered under the Registration of Businesses Act of 1909, for damages for alleged breach of an agreement to admit him as a member of the firm. The declaration alleged that the agreement had been made in 1905 with the plaintiff who was then in defendants' employment by W., a member of the defendant firm, acting on behalf of the firm, that the agreement had provided for plaintiff's admission, when X should be admitted; and that X had been admitted and plaintiff rejected:—Held, on exception, that, on the admission of X, the old firm had been dissolved and a new firm had been formed, and that, in the absence of any allegation that the existing firm was liable for the obligations of the old one, the declaration disclosed no cause of action against the defendants.*

Argument on Exception to the plaintiff's declaration.

The material portions of the declaration were as follows:—

The plaintiff is Frederick George Whitelock, an accountant, of Johannesburg. The defendants are Rolfes, Nebel & Co., a partnership registered under the Regis-

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tration of Businesses Act 1909, and carrying on business in Johannesburg. In or about December, 1905, it was agreed between the plaintiff, who was then in the defendants' service, and Werner Rolfes, a member of the defendant partnership, and acting on behalf of the defendants, that, in consideration of the plaintiff consenting to remain in the service of the defendants, the defendants would admit the plaintiff to partnership with them in the month of September, 1906, at which time the defendants intended to admit to partnership with them certain other persons by name Taylor, Young and Ries, and it was further agreed that the plaintiff should be so admitted to partnership on the same terms as might be granted by the defendants to the said Taylor or the said Young. Thereafter it was agreed between the plaintiff and the said Werner Rolfes, acting as aforesaid, that the date of admission to partnership of the plaintiff, the said Taylor, Young and Ries, should be postponed to September, 1907. The date of admission was thereafter again postponed. In the month of April, 1909, the defendants admitted into partnership with them a junior partner, namely, the said Taylor. Although requested, the defendants refused and still refuse to admit the plaintiff to partnership with them upon the terms granted to Taylor or at all. By reason of the premises the plaintiff has suffered damages to the extent of £10,000 sterling.

The defendants excepted to the declaration in that the declaration was vague and embarrassing and did not disclose any ground of action, wherefore they prayed that the action might be dismissed with costs.

*F. W. Beyers*, for the excipients (the defendants): *Ex facie* the declaration the defendants are not liable. The contract was made in 1909 with a certain firm. In 1909 on the admission of Taylor to the firm the whole partnership was changed. The old partnership ceased to exist and a new one came in force (*Standard Bank vs. Wentzel and Lombard* [1904] T.S., 828. This latter partnership is the one now registered and which is being sued, and, accordingly, it is not liable for the contracts of the original partnership. The proper persons to be sued are the individual members of the partnership with whom

the contract was made in 1905. There is not sufficient allegation of authority for a partner to make this contract.

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*F. W. Beyers* desired to put in a certificate as to the members of the registered firm under § (5) of Act 36 1909, in support of his exception.

The Court ruled that this was evidence and therefore could not be adduced in an argument on exceptions.

*S. S. Taylor*, for the respondent (the plaintiff): The declaration discloses a cause of action. It states that in 1905 the contract was made with Rolfes, "a member of the defendant partnership and acting on behalf of the defendants." It does not state that the contract was made with the original firm. Further, there is nothing in the declaration to show that Taylor is now a member of the defendant firm; he may have left the partnership and, consequently, the defendant firm may now be the same firm who made the contract in 1905.

MASON, J.: In this action the plaintiff claims £10,000 from the defendants on the ground that they refused to admit him as a junior partner of their firm. The declaration alleges that the defendants are a partnership registered under the Registration of Businesses Act 1909; that in 1905 an agreement was made by Werner Rolfes, a member of the defendant partnership and acting on behalf of the defendants, to admit the plaintiff into the partnership, on the same terms as certain other persons, including a certain Taylor; that the date of admission was postponed from time to time; that in 1909 Taylor was admitted into the partnership, and that ultimately the defendants refused to admit the plaintiff.

An exception is taken to this declaration on the ground substantially that the plaintiff is suing the existing firm in respect of a contract made by the old firm; that the contract was made in 1905 with a certain partnership, and that on the admission of Taylor to that partnership in 1909, the partnership was dissolved and terminated, and that the only persons liable on the contract are the members of the original partnership. In my opinion this contention is a sound one. On the admission of Taylor in 1909, the old partnership terminated,

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and a new one came into existence. The plaintiff is suing the new partnership on a contract made by the old firm; this cannot be done, unless the new partnership has by agreement rendered itself liable for the acts of the old one. There is no allegation of any such agreement in the declaration and, therefore, the declaration must fail. *Mr. Taylor* has argued that the partnership, now being sued, is not the partnership of which Taylor is a member. Even assuming this to be the case, the difficulty he has to meet is that he is suing some new partnership, whatever it may be, for it is clear the original partnership terminated in 1909, on the admission of Taylor, and, if he subsequently left the partnership, another new partnership came into existence. As the effect of this exception is to decide that the plaintiff has no action against the registered partnership, I shall, as prayed, dismiss the case with costs.

[Plaintiffs Attorneys: Messrs. CLIFFE & DEKKER.  
Defendants Attorneys: Messrs. STEVTLER, GRIMMER & MURRAY.]

[Reported by G. WILLE, Esq., Advocate]